

06/10/2005 15:27 4105811109

JAMES A FORSYTH

PAGE 01

**Law Offices of JAMES A. FORSYTH**

11604 Garrison Forest Road, Owings Mills, Maryland 21117  
Tel (410) 581-1108 Fax (410) 581-1109 e-mail: jaforsyth@comcast.net

June 10, 2005

Mr. Robert E. Nicolay  
Chairman, Certificate of Need Task Force  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, MD 21215

BY FAX

Re: Comments re CON Program

Dear Chairman Nicolay:

Thank you for the opportunity to offer these modest comments on the Certificate of Need Program. My comments relate largely to the coverage of comprehensive care facilities, as follows:

Modifications to Scope of CON-regulated Services and Facilities

- The home health and hospice agencies should not be CON - regulated.
- If CON regulation of home health and hospice continues, the Program should include provisions exempting multi-facility providers of long term care services including assisted living, skilled nursing and a range of other services. Sound health planning and regulatory policy should not impose CON barriers to the provision of necessary services by the facility to its own residents in such integrated health systems.

Enhancements in the CON Application Review Process

- The Application formset and applicable CON / State Health Plan provisions should be revised so as to simplify reviews by eliminating duplicative and unnecessary requirements which only add expense and time to the CON process. Specifically,
  - eliminate the practice of requiring applicants to submit detailed design and construction plans. This adds substantial application expense when an applicant is not assured of even receiving a CON. Further, the requirement duplicates the regulatory oversight of other DHMH agencies which regulate design and construction of health care facilities. MHCC Staff's concern about assessing reasonable construction

06/10/2005 15:27

4105811109

JAMES A FORSYTH

PAGE 02

Mr. Robert E. Nicolay, Chairman

June 10, 2005

Page 2

costs can be addressed simply by arriving at ballpark figures which can be determined without detailed construction plans or a complete and detailed *M & S* analyses.

- Eliminate State Health Plan Long Term Care review standards which are duplicative of existing DHMH / OHCQ regulations. These include standards concerning multiple bed rooms, public water, facility and unit design, appropriate living environment, transfer and referral agreements, and public information and protection.
- Eliminate delays and arbitrariness in Completeness Review by adhering to the traditional requirement that it is a quantitative rather than qualitative review. Staff characterizations of application responses as "not responsive" or lacking documentation are *qualitative* in nature. In cases where Staff desires more information or has questions, Staff should adhere to regulatory provisions which give them the authority to request "Additional Information". This would avoid the time and expense of delays in docketing applications which result in lengthier reviews and the attendant expense.
- Establish a 'Review Conference' after application submission or docketing in non-comparative reviews so that the applicant can be advised of *specific* issues of concern to Staff. This would serve to expedite the review by allowing an applicant to submit additional information which is responsive to particular Staff concerns. Under current practice, applicants are not sufficiently apprised of issues during the review and do not learn of concerns until a proposed decision is issued.
- Eliminate the requirements for the Medicaid Memorandum of Understanding. This is a relic of a time when Medicaid recipients experienced access problems. There is no such problem in the current health care system.
- Revise the new CON Review Schedules so that a CON application may be filed at any time for non - comparative reviews of projects seeking to add beds / capacity acquired from other facilities, to re-locate beds from an existing facility to a new facility or to re-license temporarily de-licensed beds. Under the newly adopted schedules, innovation is stifled since the yearly schedule is not designed to accommodate such projects which can occur at any time.

Quarterly Reports within 10 days of their filing. In addition, require that monitoring Staff include any questions or requests for additional information or clarification in the written acknowledgement to the CON - holder.

06/10/2005 15:31 4105811109

JAMES A FORSYTH

PAGE 02

Mr. Robert E. Nicolay, Chairman

June 10, 2005

Page 3

- Revise the CON regulations to allow an applicant in non-comparative reviews to address the full Commission to present its comments on a proposed decision approving its application. Under current practice, applicants do not have this right unless they are submitting Exceptions *after* the Commission has issued its decision. Staff alone gives a presentation on its recommendation and the proposed findings of fact. In this regard, Staff serves as a barrier between the applicant and the Commission. The Commission should be afforded the opportunity to learn of the applicant's views on any disputed issue which may be of future effect in other CON reviews. Simple fairness requires that applicants should be able to address the Commission when it disagrees with Staff on particular issues even in cases where the ultimate recommendation is for project approval.
- Revise Staff practice requiring applicants to submit a separate 'Bed Need Analysis' for projects involving beds which are already in the inventory. Staff's practice results in an expensive duplication of the bed need analysis already present in the State Health Plan.
- Revise the CON criterion assessing the impact of a proposed project on existing providers to make it clear that even though a proposed project may have some negative impact, it may still be found consistent with the criterion if the Commission determines the project will have a positive impact on the area's health care system. This will encourage innovative projects.
- Eliminate the requirement that an existing facility in operation must wait two years before expanding its capacity through a CON. This requirement stifles innovation.

#### Enhancements in Monitoring CON Projects Under Development

- Ensure that Staff reviews Quarterly Reports concurrent with their filing, which has not always occurred in the past according to testimony in a Commission hearing.
- Require that Staff provide written acknowledgement of the receipt of Quarterly Reports within 10 days of their filing. In addition, require that monitoring Staff include any questions or requests for additional information or clarification in the written acknowledgement to the CON - holder.

06/10/2005 15:31 4105811109

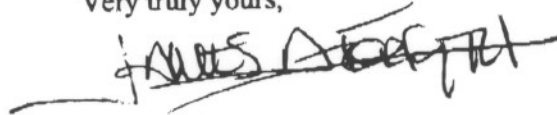
JAMES A FORSYTH

PAGE 03

Mr. Robert E. Nicolay, Chairman  
June 10, 2005  
Page 4

Thank you for considering these views which are presented on my own behalf.

Very truly yours,

A handwritten signature in black ink, appearing to read "JAMES A. FORSYTH", with a horizontal line drawn underneath it.

JAMES A. FORSYTH

JAF/met